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19 *Attorneys for State Farm Mutual Automobile Insurance*
20 *Company and its affiliates and subsidiaries*

21 **UNITED STATES BANKRUPTCY COURT**
22 **NORTHERN DISTRICT OF CALIFORNIA**
23 **SAN FRANCISCO DIVISION**

24 In re:

25 PG&E CORPORATION and PACIFIC
26 GAS & ELECTRIC COMPANY,

27 Debtors.

- 28 ☐ Affects PG&E Corporation
☐ Affects Pacific Gas and
Electric Company
☒ Affects both Debtors

* All papers shall be filed in the Lead
Case, No. 19-30088 (DM).

Case No. 19-30088 (DM)
Chapter 11
Jointly Administered

**JOINDER TO THE MOTION OF THE AD
HOC GROUP OF SUBROGATION CLAIM
HOLDERS FOR RELIEF FROM THE
AUTOMATIC STAY**

Hearing Date and Time: July 24, 2019 at 9:30
a.m. (PT)

Hearing Location: 450 Golden Gate Ave., San
Francisco, CA, Courtroom 17

Judge: Hon. Dennis Montali

Related Docket Nos: 2863

1 State Farm Mutual Automobile Insurance Company and its affiliates and subsidiaries
2 (collectively, "State Farm"), as creditors and parties in interest in the above-captioned chapter 11
3 cases of Pacific Gas and Electric Company (the "Utility") and PG&E Corporation ("PG&E" and,
4 together with the Utility, the "Debtors"), by and through its undersigned counsel, hereby file this
5 joinder (the "Joinder") to the *Motion of the Ad Hoc Group of Subrogation Claim Holders for*
6 *Relief from the Automatic Stay* (the "Motion") [ECF No. 2863].¹ In support of the Joinder, State
7 Farm respectfully sets forth and represents as follows:

8 **JOINDER**

10 State Farm is one of the largest property and casualty insurers in the State of California, is
11 believed to be the insurer holding the most insurance subrogation claims against the Debtors and
12 has recently joined the Ad Hoc Group of Subrogation Claim Holders.² State Farm's claims are
13 expected to be in the billions of dollars.

15 Two Motions have been filed in this case seeking relief from the automatic stay in order to
16 resume the currently pending state court case pertaining to the 2017 Tubbs Fire. First, the
17 Official Committee of Tort Claimants filed the *Amended Motion of the Official Committee of Tort*
18 *Claimants for Relief from Automatic Stay to Permit State Court Jury Trial of 2017 Tubbs Wildfire*
19 *Claims* (the "TCC Motion") [ECF No. 2904] seeking relief from the automatic stay with respect
20 to eleven plaintiffs (the "Individual Plaintiffs") to determine the Debtors' liability for, and
21 measure of damages in the 2017 Tubbs Fire. Two of the Individual Plaintiffs – Barbara
22 Thompson and Raleigh Fohrman – are insured by State Farm.

24 Second, the Ad Hoc Group of Subrogation Claim Holders filed the Motion seeking relief

26 ¹ Each capitalized term used but not defined herein shall have the meaning ascribed to it in the Motion.

27 ² State Farm expects the Ad Hoc Group of Subrogation Claim Holders' updated 2019 Statement to be filed
28 shortly.

1 from the automatic stay to allow the state court case to determine the sole issue of the Debtors'
2 liability (but not the measure of damages) for the 2017 Tubbs Fire to proceed with respect to the
3 Individual Plaintiffs. As previously noted, two of the Individual Plaintiffs are insured by State
4 Farm.

5
6 For all of the reasons explained and argued in the Motion, the automatic stay should be
7 lifted to allow State Farm's subrogation claims to be tried together with the Individual Plaintiffs'
8 claims in order to determine the Debtors' liability to its insured Individual Plaintiffs for the 2017
9 Tubbs Fire in the *California North Bay Fire Cases*, JCCP No. 4955 (Cal. Super Ct. Mar. 12,
10 2018) (the "California State Court Cases"). State Farm has paid significant amounts to cover
11 Barbara Thompson's and Raleigh Fohrman's claims under their respective insurance policies for
12 damages caused by the 2017 Tubbs Fire. In paying the Individual Plaintiffs' claims under their
13 respective insurance policies, State Farm has acquired and now maintains subrogation claims
14 against the Debtors.
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16 State Farm joins the Motion and adopts the arguments made therein, including that (i) the
17 determination of the Debtors' liability for the 2017 Tubbs Fire is a gating issue for any
18 consensual resolution of the wildfire claims against the Debtors and therefore for the development
19 of a confirmable chapter 11 plan in these cases, (ii) there is substantial evidence that the Debtors
20 caused the 2017 Tubbs Fire, (iii) the Tubbs Fire caused significant damage by destroying
21 approximately five percent of Santa Rosa's housing stock, burning over 36,807 acres across
22 Sonoma and Napa Counties, and killing at least 22 individuals, (iv) the Debtors failed to take the
23 necessary steps to reduce the risks of potential wildfires and caused the North Bay Fires,
24 including the Tubbs Fire, (v) Barbara Thompson is a plaintiff in the pending state court case
25 against the Debtors and qualifies for mandatory trial preference under California law, and (vi)
26 Raleigh Fohrman is a plaintiff in the pending state court case against the Debtors and qualifies for
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1 mandatory trial preference under California law.

2 State Farm additionally asserts that, should this Court lift the automatic stay to allow the
3 Individual Plaintiffs to resume the California State Court Cases, its subrogation claims should be
4 tried together with the Individual Plaintiffs' claims. Under the subrogation doctrine, "when an
5 insurer has paid an insured the amount of a loss caused by a third party, the insurer may step into
6 the shoes of the insured and pursue the insured's rights and remedies against the third party
7 tortfeasor." *Allstate Ins. Co. v. Mel Rapton, Inc.*, 77 Cal. App. 4th 901, 912, 92 Cal. Rptr. 2d 151,
8 159 (2000); *see also Intri-Plex Techs., Inc. v. Crest Grp., Inc.*, 499 F.3d 1048, 1053 n.6 (9th Cir.
9 2007) (citing *Hodge v. Kirkpatrick Dev., Inc.*, 130 Cal.App.4th 540, 548, 30 Cal.Rptr.3d 303
10 (2005) (internal citations omitted)). As noted above, State Farm has already made significant
11 payments to the Individual Plaintiffs to cover their claims under their respective insurance
12 policies. Therefore, State Farm holds subrogation claims against the Debtors as tortfeasors in the
13 California State Court Cases and now has a right of action based on the same underlying facts as
14 the Individual Plaintiffs. *Allstate Ins. Co. v. Mel Rapton, Inc.*, 77 Cal. App. 4th at 908 ("When . .
15 . the insured is only partially compensated by the insurer for a loss [the] operation of the
16 subrogation doctrine 'results in two or more parties having a right of action for recovery of
17 damages based upon the same underlying cause of action.'") (quoting *Ferraro v. Southern Cal.*
18 *Gas Co.*, 102 Cal.App.3d 33, 41, 162 Cal.Rptr. 238 fn. omitted (Ct. App. 1980)).

19 Because State Farm's subrogation claims and the Individual Plaintiffs' claims are based
20 on the same facts, State Farm's claims should be tried with those brought by the Individual
21 Plaintiffs to prevent impermissible claim splitting. California law specifically prohibits plaintiffs
22 from splitting a cause of action where the insured and the insurer pursue separate actions on the
23 same claim. *Allstate Ins. Co. v. Mel Rapton, Inc.*, 77 Cal. App. 4th at 909 ("Although the insurer
24 may bring a separate action against the tortfeasor, the rule against splitting a cause of action is
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1 violated where both the insurer and insured pursue separate actions.”) (internal citation omitted);
2 *Intri-Plex Techs*, 499 F.3d at 1055 (finding that the insured should have pursued its claim with the
3 insurer when the insured’s policy did not cover all of its losses). To prevent engaging in this
4 prohibited splitting, courts advise that the insured and insurer “join in a single suit against the
5 tortfeasor.”” *Allstate Ins. Co. v. Mel Rapton, Inc.*, 77 Cal. App. 4th at 909 (quoting *Ferraro v.*
6 *Southern Cal. Gas Co.*, 102 Cal.App.3d at 43, 162 Cal.Rptr. 238). Furthermore, State Farm, as
7 the insurer holding subrogation claims, has a *duty* to protect its subrogation rights by not
8 permitting the splitting of a cause of action. *Allstate Ins. Co. v. Mel Rapton, Inc.*, 77 Cal. App.
9 4th at 912 (emphasis added) (citing *Kidd v. Hillman*, 14 Cal. App. 2d 507, 510, 58 P.2d 662
10 (1936)). Therefore, if the Individual Plaintiffs are granted relief from the automatic stay to
11 resume the California State Court Cases, State Farm should be permitted to join the state action to
12 protect its subrogation claims and avoid impermissibly splitting a cause of action.
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CONCLUSION

Given the necessity of determining the Debtors' liability for the 2017 Tubbs Fire, State Farm joins the Motion and requests that this Court lift the automatic stay to allow the state court case to resume and effectively litigate the sole question of the Debtors' liability for the 2017 Tubbs Fire with respect to the Individual Plaintiffs insured by State Farm and State Farm's related subrogation claims.

DATED: July 15, 2019

/s/ Shmuel Vasser
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